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No. 80-1527
IN THE

Supreme Court of the United States

October Term, 1980.

WILLIAM R. LUMMIS, Temporary Administrator of the Estate of Howard R. Hughes, Deceased, *et al.*,

Petitioners,

vs.

LOS ANGELES AIRWAYS, INC.,

Respondent.

On Petition for Writ of Certiorari to the Court of Civil Appeals, 14th Supreme Judicial District of Houston, Texas.

BRIEF FOR LOS ANGELES AIRWAYS, INC. IN OPPOSITION.

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Questions Presented.

1. Is a State constrained by the Full Faith and Credit clause from applying its own more liberal statute of limitations to claims dismissed by summary judgment in another State solely on the basis of the latter State's period of limitations of actions?

2. Is it impermissible under the Equal Protection clause of the 14th Amendment for Texas to distinguish in its statute of limitations tolling statute between resident and non-resident Texas domiciliaries?

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BRIEF FOR LOS ANGELES AIRWAYS, INC. IN OPPOSITION.

Opinion Below.

The opinion of the Court of Civil Appeals, 14th Supreme Judicial District of Houston, Texas is reported at 603 S.W.2d 246 (1980) and is annexed to the petition as Appendix A. The parties to the proceeding below are correctly identified by petitioner (Pet. p. II).

Jurisdiction.

The judgment of the Court of Civil Appeals was entered on 18 June 1980. The petition for rehearing was denied on 16 July 1980. The application for writ of error in the Supreme Court of Texas was denied, n.r.e., on 15 October 1980. The petition for rehearing was denied on 17 December 1980. The petition for writ of Certiorari was filed on 9 March 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and Supreme Court Rule 17.

Statement.

On 18 June 1980, the Court of Civil Appeals, 14th Supreme Judicial District, Houston, reversed a summary judgment for petitioner ["the Estate"], because the Estate had failed to establish that there were no triable issues of fact whether the statute of limitations was tolled on respondent's creditor's claim against the Estate because of the extraordinary circumstances of the final decade of the life of Howard Hughes.[1]

The facts are set forth in detail in respondent's briefs in the Texas Court of Civil Appeals (appellant's opening brief, at pp. 2-22; appellant's reply brief at pp. 1-6) and in the Supreme Court of Texas (reply to application for writ of error, at pp. 3-7). A copy of each of those briefs is being lodged with the Clerk of this Court. The facts before the courts below were those contained in the probate court complaint filed in Houston by respondent Los Angeles Airways,

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[1]The Estate tries to denigrate the merits of LAA's unlitigated claims against the Hughes Estate by alluding to unfinished related litigation against Hughes' corporations. The Estate says that this probate claim is LAA's sixth attempt to "get yet another bite at the apple." (Pet., p. 7). In fact, LAA had never had its day in court against Hughes or his Estate because of several extraordinary circumstances. They include Hughes' flight from the United States in 1970, concealment of Hughes' records of his negotiations with LAA until after Hughes had died in 1976, and an unreported decision of the California Court of Appeal in 1976 which prevented LAA from subjecting Hughes to the *in personam* jurisdiction of the State in which Hughes had sought to buy and operate a regulated public utility, viz. LAA.

There has been no final decision in any court on the merits of LAA's claims against the Hughes corporations (an appeal is pending from a judgment for Summa Corporation and Hughes Air Corporation in the California Court of Appeal, Second Appellate District (2d Civ. No. 53210)). See: *United States v. United Airlines, Inc.*, 216 F.Supp. 709, 719, 725 (S.D. Cal. 1962); Calif. Code of Civil Proc. § 1049. That appeal has been delayed because of a related writ of error *coram vobis* proceeding in the appellate court which involved the issue of the fraudulent concealment of the Hughes Penthouse files on the LAA acquisition. See: *Los Angeles Airways, Inc. v. Hughes Tool Company*, 95 Cal.App.3d 1, 156 Cal.Rptr. 805 (2d Dist. 1979).

Inc., a California corporation in bankruptcy ["LAA"]. LAA was a CAB-certificated commercial airline which provided helicopter service in metropolitan Los Angeles until it suspended operations in the fall of 1970, when it sought the protection of the bankruptcy court in Los Angeles under Chapter 11 of the Bankruptcy Act. There was no trial on LAA's complaint; hence there was no jury verdict or finding of fact below.

As alleged in LAA's complaint, LAA was approached in 1968 by one of Howard Hughes' representatives, Francis Fox, who held the title of Director of Aviation for Hughes' operating division in Nevada: Hughes Nevada Operations. The overture concerned Hughes' desire to purchase LAA.

In August, 1968, Hughes — acting through his Chief of Nevada Operations, Robert Maheu[2] — entered into an agreement in principle with LAA to purchase all of LAA's assets and to assume LAA's liabilities. Hughes' lawyers prepared a "letter agreement" memorializing the deal. For business reasons, Hughes persuaded LAA to delay consummation of the transaction, and Hughes arranged substantial financial assistance for LAA to keep LAA viable while Hughes first completed his acquisition of another regional airline in the same locality: Air West. Hughes caused nearly $2 million in loans to be made to LAA for operating capital. Also, Hughes induced LAA to acquire more aircraft and to encumber its existing aircraft in order to keep flying while Hughes bought Air West. LAA relied to its detriment upon the Hughes commitment not only by going deeper into debt, but also by refraining from seeking another purchaser.

After two years of delays, Hughes failed and refused to complete the acquisition of LAA, fired Maheu, and fled the

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[2]See: *Maheu v. Hughes Tool Co.*, 569 F.2d 459, 466 (9th Cir. 1979).

United States. LAA suspended its operations and filed a bankruptcy proceeding. This litigation resulted. LAA seeks money damages on several theories: — breach of oral contract, promissory estoppel with detrimental reliance, and fraud — in the sum of $16,616,640.

ARGUMENT.

1. There Is No Genuine Full Faith and Credit Issue Presented.

The Estate argues that Texas violated the Full Faith and Credit clause (Const., Art. IV, §1) by applying its own statute of limitations below instead of dismissing the Texas action based upon the Nevada summary judgment, which had dismissed LAA's similar claims against the Estate because of the running of the Nevada statute of limitations.[3] The Estate contends that the Nevada summary judgment was a judgment on the merits of LAA's claims against the Estate and that it must be afforded Full Faith and Credit by Texas. Thus, the Estate contends that the Nevada decision has a *res judicata* effect upon LAA's claims against the Estate in the Texas action. (Pet. pp. 8-12). Simply stated, the Estate's argument is as follows: If F^1 dismisses a claim as barred by the statute of limitations in F^1, then F^2 must dismiss the same claim on *res judicata* and Full Faith and Credit principles, notwithstanding that F^2's statute of limitations does not bar the claim. The Estate offers no authority squarely on point for this contention, which conflicts with the judicial policy to give a litigant his day in court.

1.1. The Nevada Summary Judgment (Still Pending Appeal), Based on the Nevada Statute of Limitations, Is Irrelevant to This Texas Action.

The Nevada judgment did not reach the merits of LAA's claims against the Hughes estate. All that was decided by the Nevada trial court was that the Nevada tolling statute

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[3]The Nevada summary judgment was on appeal when the Texas probate court granted summary judgment for the Estate without identifying the ground for the Texas summary judgment. LAA's appeal from the Nevada summary judgment was argued in the Nevada Supreme Court on 12 March 1981 and is now under submission pending decision.

did not suspend the running of the Nevada statute of limitations on LAA's claims during Hughes' 5½ year absence from Nevada. The Nevada judgment must be afforded Full Faith and Credit by Texas only on those issues which the Nevada court purported to adjudicate. *Barber v. Barber*, 323 U.S. 77, 65 S.Ct. 137 (1944). Full Faith and Credit is not offended when Texas construes its own tolling statute and finds that its courts may consider the merits of claims eschewed by Nevada. The choice of law rules of Texas govern matters of remedy and procedure, including statutes of limitation. The Texas courts have held repeatedly that Texas will apply its own statute of limitations, as a matter of legislative policy of the forum, in actions brought in Texas. See, *e.g.*, *Hobbs v. Hajecate*, 374 S.W.2d 351, 352 (Tex. Civ. App. -Austin 1964); *Ross v. Kansas City S.R. Co.*, 76 S.W. 626 (Tex. Civ. App. 1904, no writ); *St. Louis & S.F.R. Co. v. Sizemore*, 116 S.W. 403, 409 (Tex. Civ. App. 1909); *Tilliard v. Hall*, 32 S.W. 863, 865-866 (Tex. Civ. App. 1895). *Cf. Titus v. Wells Fargo Bank & Union Trust Co.*, 134 F.2d 223, 224 (5th Cir. 1943); *Accord: Bournias v. Atlantic Maritime Co.*, 220 F.2d 152 (2d Cir. 1955) (Harlan, C.J.); *Goddard v. Security Title Ins. & Guarantee Co.*, 14 Cal.2d 47, 92 P.2d 804 (1939); *Chevron Oil Co. v. Huson*, 404 U.S. 97, 111-112, 92 S.Ct. 349, 357-358 (1971) (concurring opinion of Douglas, J.).

The Estate contends that the authorities relied upon by the Court of Civil Appeals below and those cited above are all distinguishable, because they (Pet. p. 10):

> were original action cases and did not address a situation such as this one here, i.e., where one party who has litigated a claim and lost in a sister state seeks to relitigate the same claim in another state.

The Estate's putative distinction between those authorities and this case is elusive. The strongly prevailing view both

of the courts and the commentators is directly contrary to the Estate's primary contention. In 1933, a panel of the Second Circuit, recently described by Circuit Judge Henry Friendly as "our court's first team"[4] — Circuit Judge A. Hand, with L. Hand and Swan — announced the pertinent conflict of law rule in *Warner v. Buffalo Drydock Co.*, 67 F.2d 540, 541 (2d Cir. 1933):

> * * * The decisions of the Supreme Court and the English cases all indicate that the judgment of the court of a foreign state which dismisses a cause of action because of the statute of limitations of the forum is not a decision upon the merits and is not a bar to a new action upon the identical claim in the courts of another state. This is the settled doctrine of the English courts. Harris v. Quine L.R. 4 Q.B. 652; Huber v. Steiner, 2 Bing, N.C. 202; William v. Jones, 13 East. 439. The same rule has been applied by the Supreme Court [*Bank of United States v. Donnally*, 8 Pet. 361, 8 L.Ed. 974].

The Second Circuit went on to explain the rule as follows (67 F.2d at 542):

> * * * All the court in Ohio decided was that the remedy was barred there because of laches. If another action had been brought in that court, the Ohio decree would have been a bar, for it determined the applicability of the Ohio statute of limitations which would necessarily have been involved in any jurisdiction where the statute operated [citations omitted].
>
> The Ohio decree does not fail to bar the remedy in the present action because it is not res judicata as to everything which it decided, but because it did not decide that the plaintiffs' claim was extinguished, but only that they could not sue in Ohio on account of the local statute of limitations.

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[4]*Sack v. Low*, 473 F.2d 360, 363 (2d Cir. 1973) (per Friendly, C.J.).

> * * * Because, however, such a defense goes not to the substance of the contract but operates merely on the remedy, a judgment which denies relief merely because such a statute has run against the claim, determines only that no action may be brought on that claim in that state. It does not and cannot determine that an action may not be maintained on the contract in another state.

The Tenth Circuit has recognized the principle when applying New Mexico law. *Stokke v. Southern Pac. Co.*, 169 F.2d 42, 43 (10th Cir. 1948). The commentators are in accord: R.A. Leflar, *American Conflicts of Law* (3d ed. 1978) § 83 at p. 166; *Restatement of the Law Second, Conflicts of Laws 2d*, § 110 (1969); *Restatement of the Law of Judgments*, § 49 (1942).

1.2. Full Faith and Credit Does Not Compel Texas to Follow a Trial Court Decision in Nevada Which May Be Overturned by the Nevada Supreme Court.

As we have noted above (*supra*, fn. 2, p. 3), the Nevada trial court decision, which the Estate says was entitled to be given Full Faith and Credit by Texas, is still pending review on appeal in the Nevada Supreme Court. The Estate never urged the Texas courts to abate the Texas action until the appeal from the Nevada summary judgment — based solely on the Nevada tolling statute — had been decided by the Nevada Supreme Court. Instead, the Estate demanded of the Texas appellate courts an affirmance of the Texas probate court's summary judgment decision without regard to what Nevada might ultimately say about LAA's right to pursue its claims against the Estate in Nevada.

The Estate's request of Texas threatened to produce an absurd result. If the Nevada Supreme Court reversed the Nevada summary judgment for the Estate — just as the

Texas Court of Civil Appeals has reversed the Texas summary judgment for the Estate — and Texas had adopted the Estate's contention that Texas was obliged by the Constitution to follow the *erroneous* summary judgment of the Nevada trial court, then Texas would have affirmed the Texas summary judgment on principles of law which were neither the law of Texas nor the law of Nevada. Even worse, on this view of Full Faith and Credit, the Texas summary judgment would have become final before the decision of the Nevada Supreme Court — with the paradoxical result that the Nevada Supreme Court would then have been obliged, under the Estate's gloss on Full Faith and Credit, to affirm the Nevada summary judgment, notwithstanding that the Nevada Supreme Court had believed that the Nevada trial court had erred in finding that the Nevada tolling statute did not preserve LAA's claims against the Estate in Nevada.

In summary, what the Estate wanted the Texas courts to do was to risk creating a circular process between the courts of Texas and Nevada in which the courts of *each* State would be condemned by the Full Faith and Credit clause to decide the same case in a manner contrary to its own statutes and judicial policies on limitations of actions. The Estate's argument on Full Faith and Credit proves too much. Full Faith and Credit must operate in both directions between Austin and Carson City.

The logic of the Estate's contention — on the procedural facts that now obtain — would prevent the Nevada Supreme Court from reversing the Nevada trial court's decision on the proper construction of the Nevada tolling statute. Assuming, *arguendo*, that it was error for the Texas court to reverse the Texas summary judgment before the Nevada Supreme Court had ruled, then this error was invited by the Estate through the Estate's insistence upon an affirmance of that judgment rather than requesting an abatement of

LAA's Texas appeal until LAA's Nevada appeal had been decided. See, *e.g.*, *Murphy v. Kodz*, 351 F.2d 163, 168 (9th Cir. 1965).[5]

1.3. There Is No Conflict of Decision With the Federal Courts of Appeal.

The Estate contends that the decision below is in conflict with the decisions in *Cemer v. Marathon Oil Co.*, 358 F.2d 830 (6th Cir. 1978), and *Sack v. Low*, 478 F.2d 360 (2d Cir. 1973). Neither case conflicts with the case at bar.

Indeed, on more than one occasion below, respondent has urged *Sack v. Low* as a persuasive authority favoring LAA's view that the Nevada summary judgment is not binding upon Texas. See Judge Friendly's discussion of the continued vitality of *Warner v. Buffalo Drydock Co.*, 67 F.2d 540, 541-542 (2d Cir. 1933), notwithstanding the intervening decision on rehearing in *Bertha Building Corp. v. National Theaters Corp.*, 248 F.2d 833, 840 (2d Cir. 1957) (decision on rehrg., L. Hand, C.J., dissenting), in *Sack v. Low*, 478 F.2d 360, 364 (2d Cir. 1973).

Cemer v. Marathon Oil Co., supra, is probably wrongly decided for the reasons contained in Judge Friendly's opinion in *Sack v. Low, supra*, Nevertheless, *Cemer* does not address the issue of the Full Faith and Credit Clause, because

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[5]The Ninth Circuit said: "Failure of the appellants to bring to the attention of the court considerations requiring an exercise of discretion estops them from asserting that privilege after decision on the merits [citations omitted]. To hold otherwise would encourage litigants to wager on their success on the merits, and if they lost, permit them to call the contest a nullity."

In this case, the Estate made just such an impermissible wager that an immediate decision by the Texas court, rather than an abatement pending decision of the Nevada appeal, would redound to the Estate's benefit. The Estate lost the bet and now seeks a hearing in this Court because it failed to ask Texas to wait and see how the Nevada appeal would be decided.

it involves successive decisions by federal district courts. Its narrowly focused analysis is limited to the effect of Rule 41(b), F.R. Civ. P. The case at bar involves decisions in two State systems and the earlier trial court judgment is still on appeal. *Cemer* is entirely inapposite.[6]

2. The Equal Protection Attack Upon the Texas Tolling Statute Is a Red Herring.

The Estate raises a false issue that Texas' tolling statute (Vernon's Texas Ann. Civil Stats., Article 5537) denies equal protection of law to non-resident Texas domiciliaries. Petitioner claims that a conflict of decision exists among State courts of last resort on the constitutionality of statutes which toll the State's statute of limitation while a defendant is outside of his State of domicile (Pet. pp. 12-17). There is no such conflict of decision.

In fact, all of the State supreme court decisions which are in point are consistent not only with each other, but also with the recent circuit court decision which deals with the constitutionality of a State tolling statute: *Hopkins v. Kelsey-Hayes, Inc.*, 628 F.2d 801 (3d Cir. 1980).

The Texas Supreme Court considered and rejected the argument that Article 5537 offends the Fourteenth Amendment in *Vaughn v. Deitz*, 430 S.W.2d 487, 490 (1968). The contention was made in that case, as the Estate now urges, that the Texas tolling statute unconstitutionally discriminated between Texas resident defendants and non-resident defendants who might be amenable to Texas service

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[6]The Estate would like to translate policy decisions for the federal courts embodied in Rule 41(b), and criticized by Judge Friendly in *Sack v. Low, supra*, into Constitutional law binding upon the States (Pet. pp. 11-12). Such questions of policy are appropriately consigned to the State Legislatures and State courts under the 10th Amendment.

of process by an alternative method of service. The Texas court said:

> *Defendants also argue that Article 5537, when so construed, denies them equal protection of the law.* They say that since the enactment of Article 2039a, the non-resident defendant is in the same position as one who resides in the state. We do not agree. Service of process in the state will enable the plaintiff to obtain a personal judgment against a resident defendant, but that is not true in the case of a non-resident defendant who must be served under the provisions of Article 2039a. The plaintiff may not proceed to judgment against the latter by merely serving the Chairman of the State Highway Commission. Notice of such service and a copy of the process must be sent by the Chairman to the defendant by registered mail. It is always necessary then for the plaintiff to ascertain the defendant's address, and distance is one of the factors that may make it more difficult and expensive to obtain that information. *Absence from the state is not an unreasonable or arbitrary basis of classification where the statutes of limitation are concerned, and it is our opinion that Article 5537 is valid as written.* [Italics supplied].

Similarly, the Third Circuit recently upheld New Jersey's tolling statute against a constitutional attack in *Hopkins v. Kelsey-Hayes, Inc., supra*. The court stated that the standard relevant to statutes of limitation and tolling statutes is the "minimum rationality" test. 628 F.2d at 809, notes 12, 13. Using that test the court rejected the claim that "the extra protection provided to New Jersey plaintiffs by the tolling provision, is unnecessary and arbitrary. . . . [and] therefore unconstitutional." *id.* at 810. In reaching its decision the court stated:

> The defendant's argument overlooks the fact that the tolling provision must be upheld if it "rationally furthers any legitimate state objective," without regard to whether the legislature specifically focused on that objective. *Malmed v. Thornburgh, supra.* In this case, at least one such legitimate objective is readily apparent: the tolling provision eases the burdens upon New Jersey plaintiffs prosecuting lawsuits against out-of-state defendant corporations which are not represented in New Jersey and which, in a great many instances, are difficult to locate and to serve, despite the availability of the long-arm rule.

628 F.2d at 810.

The court went on to uphold the New Jersey tolling statute stating:

> Since long-arm service is more difficult to achieve than service within the state, it is not irrational for New Jersey to distinguish between two classes of foreign corporations. Those foreign corporations which are represented in New Jersey, and are thus more readily available to plaintiffs, are afforded limitations protections. On the other hand, the limitations statutes are tolled against foreign corporations which are not represented in New Jersey and thus are not as available to New Jersey plaintiffs. This distinction between represented and non-represented foreign corporations reflects the pragmatic difficulties which may be encountered by plaintiffs suing foreign corporations. Since service of process under the long-arm statute is more difficult and time-consuming to achieve than service within the state, and since out-of-state, non-represented corporate defendants may be difficult to locate let alone serve, tolling the statute of limitations protects New Jersey plaintiffs and facilitates their lawsuits against such defendants. Because the tolling provision fulfills the legitimate state purpose of easing the special bur-

dens of suits against non-represented foreign corporations, we cannot say that the distinction which it recognizes is irrational.[15]

In footnote 15, the New Jersey Supreme Court said:

> Although many courts have construed state tolling statutes so as to exempt individuals who are subject to service of process in the state, see note 10 *supra*, no court, other than the district court in Cohn v. Searle, supra, has concluded that such a result was mandated by the constitution. In fact, in Vaughn v. Deitz, 430 S.W.2d 487 (Sup.Ct.Tex. 1968), the Texas Supreme Court specifically upheld the Texas tolling statute against a constitutional argument identical to that raised here. Moreover, in Bauserman v. Blunt, 147 U.S. 647, 13 S.Ct. 466, 37 L.Ed. 316 (1893), the Supreme Court gave effect to a Kansas statute which tolled the statute of limitations in an action against an out-of-state defendant who was nevertheless subject to service in the state. Although Bauserman did not discuss the constitutional issue, the court implicitly recognized the constitutionality of this type of tolling provision.

California has concurred in the validation of State tolling statutes — both civil and criminal — in the face of an equal protection attack. *Dew v. Appleberry*, 23 Cal.3d 630, 636-637 n. 11 and accompanying text, 153 Cal.Rptr. 219, 223 (1979); *Scherling v. Superior Court*, 22 Cal.3d 493, 500. 149 Cal.Rptr. 597, 601 (1978). In *Scherling*, the court said:

> Thus, in this instance we measure defendant's equal protection claim by the less rigorous rational relationship standard applicable to rights which are not deemed to be fundamental. As we point out above, the Legislature could have determined that the detection of the crime and identification of the criminal are more likely if the criminal remains in the state than if he departs. This assumption justifies tolling the statute of limita-

> tions for the period during which the criminal may have avoided detection by leaving the jurisdiction.
>
> That application of the tolling provision to a defendant who leaves the state may have arguably harsh results in an individual case does not render the statute unconstitutional. Since the classification has a rational relation to a valid governmental interest, we reject defendant's claim that it violates his right to equal protection of the law.

It is noteworthy that Scherling was not living clandestinely in an attempt to hide from the California authorities. In contrast the Estate's decedent, Hughes, was a classic fugitive from the judicial system. Living as an unregistered guest in heavily guarded hotel suites in foreign countries, Hughes took exquisite pains to avoid being a party, or even a witness, in any judicial proceeding. If the criminal tolling statute as applied to Scherling did not offend federal Constitutional standards, *a fortiori*, the civil tolling statutes do not fail as applied to Hughes.

The supposed conflict of decision suggested by the Estate is created by the decision of the Oklahoma Supreme Court in *Wright v. Keiser*, 568 P.2d 1262 (Okla. 1977). But that case distinguishes itself from *Vaughn v. Deitz, supra*, and the later cases which have followed it.

In *Wright v. Keiser, supra*, we have an unusual non-resident motorist service of process statute. The Oklahoma legislature has allowed a method of substituted service within Oklahoma for such defendants without requiring proof of actual notice to the non-resident motorist. 47 O.S. 1971, §§ 391-403. Such proof is required by the Texas statute. Vernon's Tex. Ann. Civ. Stats. Art. 2039a. Under the Oklahoma statute, there was no reasonable basis to distinguish between the applicability of a tolling statute to resident and non-resident motorists, because the legislature

had made it as easy to serve a non-resident motorist as a resident motorist. All that had to be done was to serve the Oklahoma secretary of state, with no further condition that the secretary of state or the plaintiff effect actual service upon the out-of-state motorist.

In this statutory context, the Oklahoma Supreme Court could find no rational basis for tolling the statute of limitations for non-resident motorists when there was no tolling provided for resident motorists. In contrast, the Texas non-resident motorist service of process statute requires not only service upon the Chairman of the Texas State Highway Commission, but also proof of actual notice to the non-resident motorist — a distinguishing fact acknowledged by the Oklahoma Supreme Court in *Wright v. Keiser*, 568 P.2d at 1266. See also: *Vaughn v. Deitz*, 430 S.W.2d at 490.

This case, unlike *Wright v. Keiser, supra*, does not involve a non-resident motorist statute. There is nothing in the record below to indicate that Howard Hughes was amenable to in-State service of process by substituted means, or at all. In fact, Hughes was uniquely unamenable to service of process anywhere in the world. See, *e.g., Trans World Airlines, Inc. v. Hughes*, 312 F.Supp. 478, 485 (S.D.N.Y. 1970), in which the plaintiff incurred $28,342.63 in costs trying to serve Hughes. Indeed, there was a serious question after Hughes had fled the United States in a cloud of mystery whether he was still alive.[7]

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[7]See Stephen Fay, Lewis Chester, Magnus Linklater, *HOAX: The Inside Story of the Howard Hughes - Clifford Irving Affair* (New York/ The Viking Press, 1972), p. 5:

"Howard Hughes had not been interviewed or photographed by any pressman since 1958. This had not prevented people from writing about him. There was a lively market for material speculating on Hughes' condition and whereabouts, but there had been nothing that any journalist could describe as 'hard' information. There was even a body of opinion that he might be dead.

"Every journalist with any experience of the Hughes organization knew that the obvious way to check the story — speak with the man

Thus, there is no present conflict of decision among the State courts of last resort on the equal protection issue. Moreover, there is little likelihood that a significant conflict will develop in the future because of the pertinent statistics set out in the Estate's petition: 38 of the 42 States which have considered the interplay of tolling statutes and subsequently adopted long-arm service of process statutes have found that the former have been nullified by the latter (Pet. pp. 16-17, n. 4 and accompanying text).

If so many States have declared their tolling statutes void, there is no occasion for this Court to devote its time to the academic question whether a State tolling statute might offend the Equal Protection clause of the 14th Amendment. Clearly, the Texas tolling statute has a rational basis for its application to non-resident Texas domiciliaries, as the Oklahoma Supreme Court has conceded. *Wright v. Keiser, supra,* at 1266.

Conclusion.

It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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himself — was quite simply impossible. Some, with the faith of atheists trying to get in touch with the Holy Ghost, did make calls to the Brittania Beach Hotel, Nassau, where Hughes was known to have rented the entire ninth floor for the past year. They got the old stonewall reply: 'We don't have a Mr. Hughes registered here.' Another long distance call wasted."